

Sneller Verbatim/idm

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1664/02

2003-04-29

In the matter between

Applicant

and

1st Respondent

MEDIATION & ARBITRATION

SOUTH AFRICAN NATIONAL

2nd

J U D G M E N T

LANDMAN J: The applicant in this matter is Mr Thabo Nqhome. The first respondent is the CCMA. The second respondent is the South African National Tuberculosis Association, the employer of the applicant, and the third respondent is Commissioner Mthombeni. The applicant has applied for the third respondent to be joined in these proceedings. That

application was granted.

The applicant referred a dispute to the CCMA for conciliation and thereafter for arbitration. In his referral for conciliation he says the following:

"With effect from 1 October 1999 the employer promoted the employee to a senior post, but has failed to pay the employee the remuneration attaching to the senior position. The employer has breached the written condition of employment."

The applicant requests the following result :

"An order that the employer fulfil its contractual obligation and compensate the employee according to the rate for the job."

The CCMA was unable to resolve the dispute and it proceeded to arbitration. In his referral of the dispute to arbitration, the applicant states that the following decision is sought from the Commissioner:

"An order to the effect that the other party pay the referring party the salary attaching to the position to which the referring party was promoted with effect from 1 October 1999."

The matter proceeded before Commissioner Mthombeni who handed down an award on 11 September 2002. The commissioner says in paragraph 8 of the award:

"It is common cause that the employee was moved to the

technical services manager position. However, it is in dispute whether such move constituted a promotion and, therefore with the increased salary attached to the position. The employee conceded that the purpose of the move was for him to understudy the position and no formal appointment was made. Despite this, he maintained that he had been promoted.

The LRA does not define the word 'promotion'. F Barker and M Holtzhouse in the *South African Labour Glossary* Juta (1999) 119 define 'promotion' as a 'process of advancing employees to positions that usually have more responsibilities, increased salaries and improved benefits'. The *South African Pocket Oxford Dictionary* define 'promote' as to 'raise to a higher rank of office'.

From this perspective I cannot find that the employee was promoted. The position in question was senior. It is, therefore, reasonable to expect the employer to formalise the appointment. Moreover, the employee, and person of his calibre, should have insisted on this being done. There is adequate evidence that the position in dispute was stripped of some functions. Therefore the employee's contention that the position had more responsibilities cannot be sustained. If

anything, the employee is entitled to an acting allowance.

In the light of the above, I cannot find that the employer committed an unfair labour practice relating to the employee's promotion."

The applicant is dissatisfied with this award and seeks to review and set it aside in terms of section 145 of the Labour Relations Act 66 of 1995. It is not the applicant's case that he was not promoted. He says specifically that he was promoted. What he wants is the remuneration which is commensurate with that post. Thus, he contends, the failure of the employer to pay that remuneration constitutes an unfair labour practice. Clearly it does not. Does the failure of an employer to pay remuneration to an employee who has been promoted or who alleges that he has been promoted constitute "unfair conduct of the employer relating to promotion" (See item 2(1)(e) of the 7th schedule to the LRA) ?. Again the answer must be no. The applicant's claim is for money. He may pursue this claim as a dispute of right. It is not a claim adjudicable by the CCMA under its unfair labour practice jurisdiction.

In the premises therefore the application is dismissed.

**SIGNED AND DATED AT BRAAMFONTEIN ON 27 MAY
2003**

A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

APPLICANT: MR THABO NQHOME